IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 11TH JANUARY 2007 / 21ST PAUSHA 1928

Crl.Rev.Pet.No. 288 of 1998(Q)

CC.300/1997 of CHIEF JUDL.MAGISTRATE, ERNAKULAM

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REVN. PETITIONER:

CAPTAIN S.M.FURTADO, MANAGING DIRECTOR,
M/S.FURS INVESTMENTS (P) LTD., JOHNSON PLAZA,
2ND FLOOR, AIVAO, DONA PAULA, GOA.

BY ADV. SRI.KURIAN GEORGE KANNAMTHANAM
SRI.KURIAN GEORGE KANNAMTHANAM
SRI.A.S.SASIDHARAN
SRI.MATHAI M PAIKADAY(SR.)

RESPONDENTS:

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1. SUMAN KUMAR, DY.SUPERINTENDENT OF POLICE,
C.B.I./S.I.C./IV/NEW DELHI,
RC 3(S)/96/CBI/SIC/IV/NEW DELHI

2. STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY ADV. SRI.K.P.SATHEESAN, SC FOR CBI
PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 11/01/2007, ALONG WITH CRRP NO. 197 OF 1998 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.R.P.Nos.288 of 1998 & 197 of 1998

Dated this the 11th day of January 2007

O R D E R

The petitioners in these revision petitions are accused 2 and 3 in C.C.No.300/97 pending before the C.J.M-Ernakulam. The petitioner in Crl.R.P.No.197/98 is the second accused. He alone prosecutes the revision now. There is no representation for the third accused who is the petitioner in Crl.R.P.No.288/1998. Altogether there were four accused persons. Accused No.4 was discharged under Section 245(1) Cr.P.C. Charges were directed to be framed against accused 1 to 3 under Section 3 of the Official Secrets Act 1923 and Section 120B of the I.P.C.

2. The law is clear that if charges are to be framed, no detailed order giving reasons is necessary and that reasons must be recorded when the accused is discharged. In the instant case, as accused No.4 was discharged, the learned Chief Judicial Magistrate has proceeded to pass a detailed order giving reasons. In that order, it is held that charges are liable to be framed against accused 1 to 3 under Section 246 Cr.P.C and that the fourth accused is entitled to be discharged under Section

245(1) Cr.P.C. Charges have not been framed actually though in the impugned order it is held that charges are liable to be framed against accused 1 to 3.

3. The crux of the allegations against accused 1 to 3 which alone need to be considered is that the first accused along with another person came to Cochin and was here from 28/04/1995 to 02/05/1995. They, later went to Goa and the first accused and the third accused executed an agreement. Accused 1 and 2, later came to Cochin along with the vessel Galathee on 11/12/1995. The third accused also came to Cochin from Goa on 16/12/1995. It is the case of the prosecution that accused 1 to 3 had entered into a criminal conspiracy. That criminal conspiracy allegedly was to unauthorisedly survey the sea of Cochin without any legal authority and for objectionable purposes. In pursuance of that conspiracy, from 19/12/1995 to 20/12/1995, from 23/12/1995 to 24/12/1995 and from 27/12/1995 to 28/12/1995, unauthorised marine survey was held collecting vital and sensitive data in that vessel using sophisticated equipment.

4. Enquiry under Section 244 Cr.P.C was conducted before the learned Chief Judicial Magistrate. Pws 1 to 14 and

Exts.P1 to P132 were marked by the prosecution. The accused, in the course of cross-examination of the prosecution witnesses, had marked Exts.D1 to D8. The learned Chief Judicial Magistrate, by the impugned order, held that as against accused 1 to 3, the prosecution has succeeded in establishing such a case which if unrebutted would warrant a conviction for the offences alleged against them, that is, Section 3 of the Official Secrets Act 1923 and Section 120B of the I.P.C.

5. The petitioners, claim to be aggrieved by the impugned order. According to them, charges are not liable to be framed against them. Such a case, which if unrebutted would warrant a conviction has not been established against them. In these circumstances, they contend that the impugned order under which it is held that charges are liable to be framed against him, is liable to be set aside invoking the revisional jurisdiction of this court under Section 401 Cr.P.C.

6. The learned Standing Counsel for the C.B.I, on the contrary, asserts that the prosecution has succeeded in establishing a satisfactory case which if unrebutted would warrant a conviction of the accused 1 to 3 and that the order

framing charges is not liable to be interfered with invoking the revisional jurisdiction. Various other contentions are also raised by the learned Standing Counsel for the C.B.I in support of his assertion that these revision petitions are not liable to be considered favourably.

7. The first accused has not preferred any revision against the order framing charges. Only accused 2 and 3 have assailed the said order. The first contention of the learned Standing Counsel for the C.B.I is that all the three accused are absconding from the court below and have not made themselves available before the learned Chief Judicial Magistrate to facilitate the framing of charges and to proceed further against them. The learned Standing Counsel for the C.B.I submits that the accused persons have blatantly violated the order granting bail to them which obliges them to appear before the learned Magistrate and participate in the proceedings. In as much as the petitioners have proved themselves to be unworthy by their conduct, the discretionary powers of revision may not be invoked in their favour, it is contended.

8. I do not want to enter in detail to the controversy

about the circumstances under which accused 1 to 3 are not now appearing before the learned Chief Judicial Magistrate. It is trite that once the records are called for in revision whether the revision petitioners prosecute the revision petition or not, the court is obliged to consider the legality, regularity, propriety and correctness of the order impugned. At any rate, I am not satisfied that the alleged unworthy conduct of the petitioners not appearing before the learned Chief Judicial Magistrate during the pendency of these revision petitions where no order of stay has been granted is sufficient to persuade this court not to consider the contentions raised by the revision petitioners against the impugned order. I shall therefore proceed to consider the contentions raised on merits. Shri.Ajay, learned counsel for the second accused has advanced detailed arguments.

9. It is next contended that these revision petitions are premature in as much as charges have not been framed already. It is held in the impugned order without any doubt or confusion that charges are liable to be framed against the petitioners. Though a proper charge in compliance with Section 246 Cr.P.C

has not been specifically framed, I am of the opinion that these revision petitions cannot be dismissed for that reason – that these revision petitions are premature as charges have not been framed. The formality of the charges not being framed and put to accused 1 to 3 is according to me insignificant in the nature of the challenge raised in this case as it has unmistakably been held under the impugned order that charges are liable to be framed against the accused persons under Section 3 of the Official Secrets Act and under Section 120B of the I.P.C. That they are not entitled to be discharged under Section 245(1) Cr.P.C is held clearly in the impugned order.

10. Contentions are raised about the nature of jurisdiction which a Magistrate exercises under Section 245(1) and 246 Cr.P.C. It is contended by the learned Standing Counsel for the CBI that a meticulous evaluation of all the materials is not at all necessary at the stage of Section 245(1)/246 Cr.P.C. The learned counsel for the revision petitioners/accused, on the contrary, contends that the court should not lose sight of the crucial distinction which exists in the procedure which continues to be prescribed for trial of warrant cases instituted otherwise

than on a police report. In so far as summons offences whether instituted on a police report or a private complaint is concerned and in so far as Session trials whether on the basis of a private complaint or police report is concerned, preliminary enquiry has been dispensed with altogether under the 1973 code. But the legislature had advisedly not dispensed with the necessity of an initial enquiry at the stage of Section 244 Cr.P.C. in so far as trial of warrant cases instituted on private complaint are concerned. The learned counsel for the petitioner Sri. Ajay contends that though preliminary enquiry prior to the framing of charges has been dispensed with in so far as the procedure for trial of other offences are concerned, the code zealously has retained the requirement of an enquiry under Section 244 Cr.P.C, in so far as warrant offences instituted on private complaint is concerned. It would be incorrect not to appreciate this conscious deviation made by the legislature in so far as trial of warrant offences instituted on private complaint are concerned, urges the counsel.

11. I am in agreement with the learned counsel for the petitioners that the legislature had consciously and advisedly

retained the requirement of an initial enquiry prior to framing of charges in so far as private complaints in respect of the warrant offences are concerned. It is not difficult to ascertain the reasons. Obviously the cognizance taken on police report of warrant cases was placed on a higher pedestal as the court has the advantage of another member of the criminal adjudicatory system – the police conducting an investigation into the allegations raised. In a private complaint, such advantage is not generally available unless an enquiry under Section 202 Cr. P.C. were conducted by the learned Magistrate. Even though, broadly it is always stated that, at the stage of framing charges, the court must consider whether a prima facie case is made out against the accused to justify framing of charges, it would be myopic not to appreciate the semantic, linguistic difference which is available in the statutory provisions while considering the question of framing charges in respect of different offences of which cognizance is taken differently. At the stage of issuing process under Section 203 Cr.P.C, the court only considers whether there are sufficient grounds to proceed against the accused. The plea of the accused must be recorded in trial of

summons cases whether instituted on police report or on the basis of a private complaint without any further vetting of materials. That is evident from Section 251 Cr.P.C which obliges the Magistrate to state the particulars of offence in a summons trial whether instituted in police report or private complaint. But in so far as warrant cases are concerned under Section 239 Cr.P.C, an accused can be discharged only when the charge is found to be groundless. In a case instituted on a private complaint discharge on the ground that the charges are groundless can be made under Section 245(2) Cr.P.C in an exceptional case. Bur normally, enquiry under Section 244 Cr.P.C will be conducted and thereafter the question has to be considered whether such a case has been made out against the accused which if unrebutted would warrant his conviction. Only then he can be discharged. Under Section 227 Cr.P.C, in so far as a Sessions offence is concerned, whether instituted on a private complaint or police report, the accused will be entitled for a discharge only when there is no sufficient ground to proceed against the accused. Under Section 227 Cr.P.C in a Sessions offence, under Section 239 Cr.P.C in a warrant case

instituted on a police report and under Section 245(1) Cr.P.C in a warrant case instituted on a private complaint after enquiry under Section 244 Cr.P.C and under Section 245(2) Cr.P.C in a warrant case instituted otherwise than on a police complaint, at any stage prior to the framing of the charges, the courts are obliged to consider whether the accused is entitled to discharge and after it is held that the accused are not entitled to be discharged, charges are liable to be framed under Section 228 Cr.P.C in a sessions offence, under Section 240 Cr.P.C in a warrant offence police charges case and under Section 246 Cr.P.C in a warrant offence on a private complaint. The cases in which the accused to be discharged have to be eliminated under the above sections – 227,239 and 245 and in all the remaining cases it has to be presumed that the accused had committed offences and charges have to be framed against the accused. This is the unmistakable conclusion that follows from the language of Sections 228, 240 and Section 246 Cr.P.C. Once, cases in which the accused is entitled for a discharge are identified and excluded under Sections 227, 239 and 245 Cr.P.C, charges are liable to be framed in respect of the remaining cases

under Sections 228, 240 and 246 Cr.P.C.

12. Though, broadly the statement that a prima facie case has to be established appears to be correct, one cannot omit to discern the distinction in the language employed by Sections 227, 239 and 245 Cr.P.C. I am in agreement with the learned counsel for the petitioner that in contra-distinction with Sections 227 and 239 Cr.P.C, the prosecution has a higher burden under Section 245(1) Cr.P.C to exclude the possibility of the accused being discharged.

13. Be that as it may, the crucial question is whether such a case has been established, which if unrebutted would warrant a conviction of the accused in this case. One must carefully understand that this requirement cannot lead to the corollary that after charges are framed, if nothing else is done by either side, the case must end in a conviction. That, certainly, does not appear to be the law. Even after coming to a conclusion at the stage of Section 245(1) Cr.P.C that such a case which if unrebutted would warrant a conviction has been established the obligation of the court to consider the materials in greater detail at the later stage of Section 248 Cr.P.C when acquittal or

conviction is recorded cannot be ignored. The quality of consideration under Section 245(1) Cr.P.C to decide whether such a case has been established which if unrebutted would warrant a conviction is qualitatively different from the consideration that will be undertaken by the court at the later stage of Section 248 Cr.P.C when the court decides whether acquittal or conviction has to be recorded. That a greater burden is there on the prosecution under Section 245 Cr.P.C when compared to the burden on the prosecution under Sections 239 and 227 Cr.P.C cannot lead the court mechanically to a conclusion that consideration under Section 245(1) is identical exactly with the consideration under Section 248 Cr.P.C.

14. It is by now trite that at the stage of framing charges, the possible and the probable defences which an accused may raise need not enter the discerning mind of the court. Probable defences are not to be considered. The exercise of weighing the evidence in golden scales is not to be resorted to at the stage of Section 245(1) Cr.P.C. The intrinsic worth of the materials and their acceptability, meticulously need not be considered at the stage of Section 245(1) Cr.P.C. Such consideration will have to

be postponed and will have to wait till the stage of Section 248 Cr.P.C. If the conscience of the court is satisfied on the basis of materials placed before the court that the accused do not deserve to be discharged and the matter deserves to be proceeded further, charges will have to be framed under Section 245(1) Cr.P.C. It is by now well settled that even a serious suspicion is sufficient at the stage of Section 245(1) Cr.P.C to justify the framing of charges against the accused. The burden at that stage is more onerous for the prosecution compared to the burden under Section 239 and 227 Cr.P.C but I repeat that it is not identical to the burden under Section 248 Cr.P.C.

15. Having said so, I shall now proceed to consider pointedly the question whether such a case has been established in this case which if unrebutted would warrant a conviction of the accused persons of the offence punishable under Section 3 of the Official Secrets Act and 120B of the I.P.C. There was undoubtedly an agreement between the accused persons to survey the ocean and the ocean-bed off the coast of Cochin. That there was an agreement is not disputed at all. The crucial question will be whether the agreement was to commit the

offence under Section 3 of the Official Secrets Act or not. That is the million dollar question which this court will have to consider in the facts of this case.

16. It will be apposite in this context to refer to Section 3 of the Official Secrets Act. I shall initially refer to Section 3(1) of the Act. It reads as follows:

> "(1) If any person for any purpose prejudicial to the safety or interests of the State-
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> (a) approaches, inspects, passes over or is in the vicinity of, or enters, any prohibited place; or
>
> (b) makes any sketch, plan, model or note which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy; or
>
> (c) obtains, collects, records or publishes or communicates to any other person any secret official code or pass word, or any sketch, plan, model, article or note or other document or information which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy [or which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with foreign States];
>
> he shall be punishable with imprisonment for a term which may extend, where the offence is committed in relation to any work of defence, arsenal, naval, military or air force establishment or station, mine, minefield, factory, dockyard, camp, ship or aircraft or otherwise in relation to the naval, military or air force affairs of Government or in relation to any secret official code, to fourteen years and in other cases to three years."

17. An analysis of the stipulations in Section 3 in the light of the facts of this case lead to the following resolutions. The crucial relevant ingredients of Section 3(1) can be stated as follows in their relationship with the facts of the instant case.

(i) A person acts for any purpose, prejudicial to the safety or interests of the state.

(ii) Such person collects information.

(iii) Such information might be directly or indirectly useful to an enemy or

(iv) such information relates to a matter, the disclosure of which is likely to affect the sovereignty and integrity of India or the security of the State.

18. It is the case of the prosecution that the evidence establishes unmistakably the above ingredients.

19. So far as ingredients (ii), (iii) and (iv) are concerned, I do not think that there is any serious controversy in the matter. That information about the ocean-bed details and magnet field details have been conducted by the accused persons as agreed to by them earlier is not disputed. Collection of information is thus

not in dispute at all.

20. The next question is whether such information might be directly or indirectly useful to an enemy. On this aspect also, I do not find any crucial dispute raised though there is no admission as such. The evidence indicates, I shall carefully avoid any detailed discussion of such evidence, that such particulars which are collected may be useful for those engaged in anti-submarine warfare. At any rate, indications to that effect are available from the evidence available. Ingredient 3 has thus been indicated seriously. It is not necessary to consider in detail the evidence recorded. The learned counsel for the petitioners has serious objections about the acceptability of the materials admitted in evidence by the learned Magistrate in the course of enquiry under Section 244 Cr.P.C. The learned counsel for the petitioners points out that the learned Magistrate who stated that the objection to admissibility shall be considered at a later stage, had proceeded to consider such materials without giving any ruling of that aspect, at the stage of Section 245(1) Cr.P.C. Whatever that be, the conclusion prima facie appears to be inescapable that the information collected, may be useful to an

enemy interested in such details. Point No.3 having thus been answered in favour of the prosecution. I am not proceeding to consider in detail whether the disclosure of the information is likely to affect the sovereignty and integrity of India and the security of the State in any further detail.

21. The learned counsel for the petitioners has trained all his guns on the first ingredient of Section 3 namely whether the purpose of the petitioners was prejudicial to the safety or interests of the State. The learned counsel for the petitioners submits that there is significant and crucial absence of even a specific allegation that the petitioners had any purpose prejudicial to the safety or interests of the State. It is not specifically alleged that the petitioners were collecting the information for any enemy country. There is no specific allegation that the petitioners wanted to part with this information to any one to jeopardise the security of the nation or its safety and interests. The prosecution has not come out with any specific allegation that the objectionable acts were committed by the petitioners for any specific purpose. The learned counsel for the petitioners submits that the prosecution

has left the accused as well as the court groping in the dark unable to ascertain the alleged purpose of the petitioners who conducted the survey of the ocean waters and ocean-bed as alleged. The learned counsel for the petitioners submits that in these circumstances the conclusion is inescapable that there is no material whatsoever to satisfy the first ingredient referred above namely that the petitioners had a purpose prejudicial to the safety or interests of the State.

22. As already indicated, I am in agreement with the learned counsel for the petitioners that no specific purpose has been established in the sense that the information was collected by the accused persons for the purpose of sharing it with any enemy or for any other nefarious or objectionable purpose. The allegation shows that though there is a vague and general allegation that the purpose was prejudicial to the safety or interests of the state, there is no further elucidation in the pleadings of what such purpose was. Even at the moment, after all the evidence under Section 244 Cr.P.C is adduced, it is not possible for this court to pinpoint and say that the specific purpose of the petitioners in collecting information was for

themselves to make use of it for any culpable or contumacious purpose or to share the same with anyone who can make use of such information for such culpable contumacious purpose. If specific and definite pleadings and evidence on that aspect were to be insisted by the court, I have no hesitation to agree that it will have to be held that ingredient (i) alone has not been satisfactorily established. The alleged purpose has not been specifically pleaded or established.

23. But the learned Standing Counsel for the CBI relies on Section 3(2) of the Official Secrets Act and contends that it may not be necessary or possible for the prosecution to identify and specify the precise purpose which is prejudicial to the safety or interests of the State. The law has to be realistic. The prosecution cannot be expected to perform the impossible. That is why, contends the learned Standing Counsel for the C.B.I, the legislature has enacted Section 3(2) which must be held to be part of Section 3(1) which defines the offences.

24. As rightly pointed out by the learned counsel for the petitioners, Section 3(2) is in two parts and only the first part appears to be relevant in the facts and circumstances of this

case. Though the Cochin Naval Base - the seat of the Southern Naval Command is close to the place where the allegedly objectionable marine survey took place, it is not admittedly in the prohibitory place that the objectionable activity was carried out. The information collected does not relate to any prohibited place and therefore I am in agreement with the learned counsel for the petitioner that the second part of Section 3(2) has no application. I extract Section 3(2) below and note that only the first part which has been underlined alone has relevance so far as the facts and circumstances of this case are concerned.

> "(2). On a prosecution for an offence punishable under this Section it shall not be necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the State, and, notwithstanding that no such act is proved against him, he may be convicted, if, from the circumstances of the case or his conduct or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the State and if any sketch, plan, model, article, note, document, or information relating to or used in any prohibited place, or relating to anything in such a place, or any secret official code or pass word is made, obtained, collected, recorded, published or communicated by any person other than a person acting under lawful authority, and from the circumstances of the case or his conduct or his known character as proved it appears that his purpose was a purpose prejudicial to the safety or interests of the

> State, such sketch, plan, model, article, note, document, [information, code or pass word shall be presumed to have been made], obtained, collected, recorded, published or communicated for a purpose prejudicial to the safety or interests of the State."

25. Section 3(2) extracted above shows clearly that it shall not be necessary in a prosecution under Section 3 to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety and interests of the state.

26. In spite of the fact that no such act sharing an objectionable purpose is proved against him, he can be convicted for the offence under Section 3 if from the circumstances of the case or the proved conduct, it appears that the purpose was a purpose prejudicial to the safety and interests of the State.

27. The learned Standing Counsel for the CBI contends that in these circumstances, the fact that it has not been established by any specific act proved against the accused that their purpose was one which was prejudicial to the safety or interests of the State, cannot, at any rate, entitled them to claim discharge at this stage. It is not the law that the prosecution has to prove invariably by proof of any act that the purpose was one

which was prejudicial to the safety or interests of the state. It is a deduction/inference, which can flow from the totality of the circumstances proved. The learned Standing Counsel for the CBI submits that there are more than sufficient and clinching indications in this case which point to the purpose of the indictees being one prejudicial to the safety or interests of the State.

28. The learned counsel for the petitioners, on the contrary, contends that wild allegations are raised against the petitioners that they entertained a purpose prejudicial to the safety or interest of the State. The learned counsel for the petitioners submits that the court should not omit to note the circumstances under which the allegations under Section 3 of the Official Secrets Act were included by the prosecution. The petitioners were arrested on 11/04/1996. The period of sixty days, which is the period, after which they will be entitled for a mandatory bail by default under Section 167 Cr.P.C was to expire on 10/03/1996 which was a Sunday.

29. On 08/03/1996, the allegation under Section 3 of the Official Secrets Act was included by a report. By such inclusion,

the period under Section 167 got extended to 90 days and this was the only purpose of incorporating the allegation under Section 3 of the Official Secrets Act at that stage. This was done by the local police who were awaiting the CBI to take over the investigation. In short, the learned counsel contends that the allegation under Section 3 was introduced mindlessly with the transparent purpose of ensuring continued detention of the petitioners till the CBI appeared on the scene and took over investigation which took place on 18/03/1996.

30. The learned counsel further contends that the first part of Section 3(2) does not at all dispense with the requirement that the purpose of the accused must be prejudicial to the safety or interests of the State. Whether specific act to indicate such purpose is proved or not, conviction may be possible. But the court has to entertain the satisfaction that the purpose was prejudicial to the safety or interest of the State and not innocent. The learned counsel contends that in the facts and circumstances, the conclusion is inescapable that there was no semblance of any purpose prejudicial to the safety or interests of the State.

31. I shall now proceed to consider the various circumstances having relevance on this aspect namely whether the purpose of the accused was one which was prejudicial to the safety or interests of the State. The law appears to be settled and beyond controversy that it must be shown that the purpose was prejudicial to the safety and interests of the State. Of course, specific and precise acts to indicate such purpose need not be proved. But from the totality of the circumstances, it must appear that the purpose was prejudicial to the safety or interests of the State.

32. The learned Standing Counsel for the CBI relies on various circumstances which I shall now try to enumerate.

33. First of all, it is contended that the petitioners have no permission whatsoever to enter the Territorial Waters of India. The very entry of theirs was, it is contended, objectionable and contrary to the provisions of The Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act 1976, hereinafter referred to as the 'Territorial Waters Act'. The petitioners admittedly did not have any permission under the said Act to conduct the survey in the Territorial Waters of India

as admittedly done by them. Their act was thus culpable and contumacious under the Territorial Waters Act. Admittedly, there is no contention that the petitioners had the requisite permission under the Territorial Waters Act to conduct the survey which they did. The learned counsel for the petitioners points out that no prosecution under the Territorial Waters Act was launched against the accused. It is crucial and significant that though such an allegation was earlier raised, the same was not pressed and no prosecution was launched later under the Territorial Waters Act evidently because the requisite sanction was not obtained from the Central Government to prosecute the petitioners for violation of the said Act. It is of course true that they were not prosecuted under the Territorial Waters Act. The fact remains that the petitioners did not have the requisite permission under the Territorial Waters Act to conduct the ocean survey.

34. The next circumstance relied on by the learned Standing Counsel for the CBI is that the petitioners had made a false representation to justify their entry into India. They claimed that they were tourists. They had not at all revealed the

real purpose of their visit. Visa was applied for under the Foreigner's Act for entry into India as tourists and not for undertaking any commercial activity. The real purpose of conducting the marine survey was thus masqueraded and was not revealed to the authorities, points out the learned Standing Counsel. From this circumstance, the counsel fervently argues that suppression of the real purpose from the authorities is a very crucial circumstance creating doubt and suspicion about the real purpose of the petitioners.

35. The learned counsel for the petitioners on the contrary contends that even though initially there was a charge under Section 14 of the Foreigners Act, 1946 and the foreigners order, no charge was ever raised against the petitioners of any such violation. It is too late in the day for the CBI to rely on that circumstance as one indicating the objectionable purpose of the petitioners, it is contended. The investigators must be assumed to have satisfied themselves that no offence is committed under the Foreigner's Act and in these circumstances, that may not be reckoned as a circumstance even remotely indicating or suggesting the complicity of the petitioners, urges the learned

counsel for the petitioners. The learned Standing Counsel for the CBI submits that notwithstanding the fact that a prosecution has not been launched for the violation of the provisions of the Foreigners Act and order, the fact remains that the real purpose – conducting a marine survey near the prohibited area – the Cochin Naval Establishment, was not revealed in the application for grant of visa. Whether the accused were prosecuted or not, the significance of that circumstance cannot be lost by the court, he submits.

36. The learned Standing Counsel for the CBI relies on the circumstance that though the petitioners claim to have obtained the requisite sanction from the Government of India for conducting the survey, no such sanction has actually been obtained. When they were intercepted, an excuse was advanced that the third accused had obtained the requisite sanction, but when they were asked to produce the same, none of the accused persons could produce such sanction which they had allegedly obtained from the Government of India. The mis-representation of this aspect is also one circumstance indicating the contumacious purpose which the petitioners entertained,

submits the learned Standing Counsel.

37. The learned counsel for the second accused, Sri.Ajay, on the contrary contends that there is no merit whatsoever in this contention. He relies on the statements of witnesses and documents to urge that even the prosecution had only a case that the third accused had cheated the other accused. The counsel contends that if the third accused had cheated the other accused by making a representation that he had obtained the requisite sanction, the circumstance that no such sanction was obtained, could never be held out as a circumstance against the other accused persons. The learned Standing Counsel, in this context, submits that it would be puerile to assume that the other accused persons also naively swallowed the version of the third accused that he had obtained the requisite sanction without and before actually perusing the same. The correspondence indicates that the survey did not commence earlier because of want of sanction. If that be so, it would be preposterous to assume that accused 1 and 2 were taken for a ride by the third accused who made a blanket representation that he had obtained the requisite sanction. That circumstance must operate against

all the three accused and not only against the third accused, contends the learned Standing Counsel.

38. The learned Standing Counsel then submits that though specific purpose or the entity for which information was being collected and the manner in which the accused expected to put to use the information collected have not been precisely stated, the fact remains that the information was collected from a very sensitive area close to the Southern Naval Command. The learned counsel relies on the materials adduced to suggest that the information which was collected – about sea-bottom details, magnetic fields etc are of vital and sensitive nature which may be helpful for conducting submarine warfare etc. The learned counsel for the second accused contends that this is an empty and vague assertion made. The learned counsel points out that such details are available in maritime maps prepared in respect of sea-bottom details and that cannot be reckoned as anything sensitive or of such crucial relevance. I do note that information relates to sea-bottom details close to the prohibitory area, the seat of the Southern Naval Command. There cannot, perhaps, be a dispute that the information collected is sensitive

information whether such information be available with some others also or not.

39. The final circumstance relied on by the learned Standing Counsel is that the explanation offered by the petitioners is far from satisfactory. The explanation for the marine survey conducted in the vicinity of the Southern Naval Command by the petitioners is only that they wanted such details to be ascertained to facilitate the study of the scope of cage culture in that area. They were collecting necessary information only for the purpose of ascertaining the feasibility of cage culture in that area. This is the only explanation offered. Of course, it is contended that they wanted to ascertain such feasibility on the western coast from Goa to Cochin and they were engaged in such activity. The learned Standing Counsel submits on the basis of the indications available in evidence, this theory is wholly unacceptable. The real truth has not been revealed by the petitioners. The petitioners are not shown to be persons who were engaged in such activity at any other place earlier. Who was to conduct the cage culture, if the information collected were favourable, is not disclosed. In short, the learned

Standing Counsel relies on the circumstances and broad probabilities to show that the explanation offered is not too convincing at all.

40. The learned counsel for the second accused, in this context, submits that half baked information/evidence tendered by the prosecution witnesses cannot, at all, be relied on at this stage to conclude that the explanation offered is suspicious or even unacceptable. The learned counsel urges that the witnesses examined by the prosecution are not real experts in the filed competent to render an authentic opinion on the acceptability of that explanation offered by the petitioners. In these circumstances, the learned counsel submits that, that circumstances relied on by the prosecution is also unacceptable. The counsel on this aspect relies on the prevarication of so called expert examined by the prosecution on this vital and relevant aspect.

41. The prohibited area is about nine nautical miles away from the area surveyed. The learned Standing Counsel also relies on the fact that highly sophisticated equipments were available in the vessel Galathee and that these sophisticated

equipments must suggest that the purpose of the petitioners was not innocent or innocuous. It is idle to assume that such complicated equipments were made use of for the mere purpose of surveying territorial waters for the purpose of ascertaining the scope of cage culture. The learned Standing counsel, further relies on the fact that a GPS Antenna was installed in the coast at the building of Our Lady of Health Church, for the purpose of the survey. The learned Standing Counsel relies on the fact that there was attempt to avoid the signals crossing the Naval Base also.

42. Mr.Ajay submits that this allegation only reveals the absence of technical information on the part of the witnesses examined by the prosecution. These equipments are in common use by various teams surveying the ocean and by no stretch of imagination can it be held to be sophisticated weapons to warrant an interference against the petitioners that they were indulging in activities with any purpose prejudicial to the safety and interests of the State. The GPS Antenna installed was installed only for the purpose of using it as a reference point while the vessel Galathee was engaged in the survey operation.

43. I have, by now, adverted to all the circumstances relied on by both sides and the explanations offered by each for the circumstances relied on by the other. The only question that remains to be considered is whether these circumstances are sufficient at the stage of framing of charges to draw a presumption against the accused and to conclude that the matter deserves to be proceeded further. I have already adverted to the nature of the burden of the prosecution and the nature of the satisfaction which the court has to entertain at the stage of framing charges. The learned counsel for the accused raises the grievance that though these contentions were all urged before the learned Magistrate, the learned Magistrate did not consider them in detail. Though the circumstances in favour of the prosecution were referred to, the explanations were not referred to at all. The learned counsel raises a further grievance that the learned Magistrate relegated such consideration at later stages and did not pointedly consider the same.

44. The law is very certain that at the stage of framing charges, detailed considerations of the rival contentions and discussion of such contentions by a reasoned decision is not

necessary. The rationale of such an approach is easy to ascertain. Such detailed discussion might prejudice the interests of the rival contestants and the court which has to consider the same question at later stages, meticulously should not be burdened with its own findings on the basis of a reasoned order at that early stage. I have already adverted to the fact that a reasoned order need be passed only when discharge of the accused is granted. If charges are to be framed, no detailed order giving reasons is necessary. The learned Chief Judicial Magistrate was obviously facing a dilemma. He had come to the conclusion that one of the four accused is to be discharged. But as against the other three, he concluded that the charges deserve to be framed. He was obliged to give reasons so far as the fourth accused is concerned but did not have to give reasons so far as the other three were concerned. In relegating detailed consideration to a later stage, I am certainly of the opinion that the learned Magistrate has not committed any error. Such detailed consideration at the stage of framing charges would certainly have generated prejudice in the mind of the indictees against the attitude and approach of the court.

45. For that precise reason, I do not propose to embark on a detailed consideration of the rival contentions referred above. But to me, the conclusion appears to be safe and reasonable at this stage that the revisional jurisdiction of superintendence and correction cannot and need not be invoked to interfere with the impugned order by which charges have been framed against accused 1 to 3. I make it clear that this observation should not be reckoned as acceptance of the contentions of the prosecution. I take the view only that the matter deserves to be proceeded further and detailed consideration has to be made, in accordance with law, at the later stage, where the evidence will be assessed, evaluated, weighed and appreciated in golden scales. I am not persuaded to agree that the revisional jurisdiction deserves to be invoked in favour of the petitioners to prematurely terminate the proceedings by an order of discharge in their favour.

In the result, these revision petitions are dismissed.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.Nos.288 of 1998
and 197 of 1998

ORDER

11th DAY OF JANUARY 2007